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1942

File No. O. Public Trusts Regn./47

Legal **DEPARTMENT**

A **BRANCH**

Subject:—

Opinion under the Bombay Public Trusts Registration Act 1935.

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File No. O. Public Trusts Regr. 147

Std. Sectt. Slip 24 B e.

406-A

C O N T E N T S

Legal Department File No.O. Public Trust Regi/1947

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It appears that the Civil Judge, Senior Division, and Registrar of Parsi and Public Trusts, Broach dismissed a peon on probation in the office of the Registrar of Public Trusts, Broach without giving him a notice to show cause. The District Judge, Broach and Panch Mahals considers that the dismissal is wrong for want of proper notice. The Revenue Department requests the R.L.A. to give his opinion on the point raised by D.J. Broach and Panch Mahals.

The staff employed by the Registrar under the Bombay Public Trusts Registration Act 1936, and the Bombay Parsi Public Trusts Registration Act, 1936 would be under his direct administrative control, and not being paid out of public revenue would not be considered as being in the employ of Government . Consequently the Bombay Civil Services Rules will not apply to such staff. In the absence of any rules and terms of contract regulating the service of these employees the general principles governing master and servant will apply. One of these principles is that in the absence of misconduct on the servant's part, the employer cannot dismiss him except by giving of reasonable notice (Re. African Association Ltd., and Allion 1910, I K.B.396). The general rule is that a servant must not be guildy of any misconduct which is inconsistent with the due or faithful discharge of his duty to his master; he must fulfil the express or implied conditions of service. Disobedience, insolence, insubordination, incompetency through want of reasonable care and skill, neglect, betrying confidence, dishonesty, moral depravity, failure to render accounts etc. are misconduct and may render the servant liable to instant dismissal (see Sarkar's Law of Master and servant p. 86). The Registrar dismissed the peon in the present case as he found him incompetent and a liar. In other words the dismissal was for misconduct. Consequently the dismissal of the peon without notice to

P.T.O.

show cause was legal. The view taken by the D.J. Broach and Panch Mahals is not correct.

Sd/- D.V.Vyas.

O.C.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6544

Dated the 25th June 1947

Mjr/9/5

4 C.

Re Revabai Bhai-Shankar Solicitor Hindu Dharmashala Trust.

Bombay Public Trusts Registration Act, 1935 and Bombay Local Boards Act, 1923(Borads) Bombay General Clauses Act, 1904

From the agreement dated 8-1-1915 appears that the Taluka Local Board of North Daskroi had undertaken the management of the trust property of the Revabai Bhaishankar Solicitor Hindu Dharmashala. The North Daskroi Taluka Local Board hainng ceased to exist, all property vesting in the said taluka local board now vests in the District Local Board, Ahmedabad, under the Provisions of section 131C of the Bombay Local Boards Act, 1923(Bom. VI of 1923).

Under section 2(1) of the Bombay Public Trusts Registration Act, 1935, the provisions of the said Act apply to all public trusts created or existing solely for the benefit of the Hindu Community or any section of such community and having an annual gross income of not less than Rs.1,00.It is not in dispute that the trust of the Revabai Bhaishankar Solicitor Hindu Dharmashala is a public trust within the meaning of section 3(3) read with section 2(1) of the said Act. The main contention of Mr.M.R. Patel, M.L.A., in his note at p.9 ante ist hat the District Local Board, Ahmedabad, as the successor of the North Daskroi Taluka Local Board is not the manager within the meaning of section 3(1) of the said Act, so as to comply inter alia with the provisions of the said section 12 thereof. The term "Manager as defined in section 3(1) means any person who for the time being either alone or in association with some other person or persons administers the property of any public trust. The word "Person" as defined in section 3(35) of the Bombay General Clauses Act, 1904(Bom.I of 1904), shall include any company or association or body of individuals whether incorporated or not. Under sec.47 of the Bombay Local Boards Act,1923,the District Local Board of Ahmedabad is a body corporate and would therefore be "any person" within the meaning of the definition of "Manage in sec.3(1) of the Bombay Public Trusts Registration Act,1935, and the said body carrying on and would therefore will therefore have to carry out the duties of the Manager under the said Act, including that of maintenance of accounts and their audit under sec.12.That the maintenance of such accounts and their audit under section 12 is in addition to such maintenance and

and audit under other Acts, is a different matter. Accordingly the provisions of the Vombay Public Trusts Registration Act, 1935 are applicable to the Revabai Bhaishankar Solicitor Hindu Dharmashala Trust Fund managed by the District Local Board, Ahmedabad, and it is obligatory on the said body to comply with, inter alia, the provisions of section 12 thereof. However, if it is intended to exempt the public trusts managed by local authorities from the provisions of the said Act, in view of the fact that they are required to maintain accounts of such trusts and have them audited under some other Acts, the proper remedy is to amend the said Bom.XXV of 1935, for that purposes as stated in the concluding portion of para. 5 of H.&. L.G.D. note at p. 13

Sd/- P.M. Lad.

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O.C.

Remembrancer of Legal Affairs

U.R. to H. & L.G.D. No. 12012, dated 13th December 1947

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4 C.